

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JAN 16 2001

In the Matter of

Compatibility Between Cable
and Consumer Electronics Equipment

)
)
)
)

PP Docket No. 00-67

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**TIME WARNER CABLE
REPLY TO OPPOSITION OF
CONSUMER ELECTRONICS RETAILERS COALITION**

Aaron I. Fleischman
Arthur H. Harding
Craig A. Gilley
Lisa Chandler Cordell

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, DC 20036
(202) 939-7900

January 16, 2001

No. of Copies rec'd 0711
LIST ABCDE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Compatibility Between Cable)	PP Docket No. 00-67
and Consumer Electronics Equipment)	

REPLY TO OPPOSITION

Time Warner Cable ("Time Warner"), by its attorneys and pursuant to Section 1.429(g) of the Commission's rules, files this Reply to the January 3, 2001 Opposition of the Consumer Electronics Retailers Coalition ("CERC") to Time Warner's Petition for Reconsideration in the above-captioned proceeding. Time Warner's Petition for Reconsideration sought to address critical deficiencies with regard to the labeling of cable compatible television receivers and digital consumer electronics devices ("CE Devices") raised by the Commission's recent *Report and Order* in the above-captioned proceeding. Time Warner operates cable television systems in numerous communities across the nation and thus has a vital interest in ensuring that CE devices support all services offered by Time Warner's systems and that appropriate labels exist to distinguish between those TV receiving devices that are compatible with its systems and those that are not.

I. INTRODUCTION

The Commission's recent decision in the above-captioned proceeding sought to resolve several issues relating to the compatibility between cable systems and digital CE equipment.¹ In

¹See *In the Matter of Compatibility of Cable Systems and Consumer Electronics Equipment*, Report and Order, PP Docket No. 00-67, FCC 00-342 (rel. September 15, 2000) ("Report and Order").

its Petition, Time Warner asked the Commission to reconsider its new labeling scheme because it will add to, not decrease consumer confusion, and thus fails to serve its intended purpose.

CERC's Opposition avoids any substantive response to this fact and is nothing more than another blatant attempt by consumer electronic retailers to obfuscate the real issues.²

II. CERC'S OPPOSITION OBFUSCATES THE REAL ISSUES RAISED BY TIME WARNER'S PETITION.

Time Warner asked the Commission to reconsider its recently adopted labels because those labels will fail to accurately "indicate to consumers the capability of television receivers to operate with cable television systems" while avoiding consumer confusion.³ Throughout this proceeding, Time Warner has consistently stressed the importance of developing a labeling system that is simple to understand, consumer friendly and not misleading.⁴ As Time Warner's Petition makes clear, the current labels fall short.

CERC's Opposition makes it apparent that it fails to appreciate Time Warner's concern regarding the use of term "cable ready." Time Warner's Petition points out the folly of labels that include the term "cable ready" when the product to which the label is attached is not really "cable ready." This concern is so straightforward and pro-consumer, it is no wonder that CERC is unable to argue against it. Instead, CERC tries to use Time Warner's Petition for Reconsideration as another opportunity to inappropriately reargue issues relating to the

²See *In the Matter of Compatibility of Cable Systems and Consumer Electronics Equipment*, Opposition of Consumer Electronics Retailers Coalition to Petitions for Reconsideration in PP Docket No. 00-67 (January 3, 2001) ("CERC Opposition").

³See *id.* at ¶ 29.

⁴See Comments of Time Warner Cable in PP Docket No. 00-67 (May 24, 2000) at 15-19 ("Time Warner Digital Compatibility Comments").

commercial availability of navigation devices.⁵ CERC's mistaken belief that Section 304 and labeling are inextricably intertwined is made apparent by its statement that "if the FCC is committed to a labeling regime, it should propound labels that are consistent with the ultimate goals of Section 304, and the options that consumers will be offered under fully supported OpenCable specifications."⁶ Navigation device issues of that sort, however, remain the subject of another proceeding.⁷

Congress' objective in adopting Section 304 of the Telecommunications Act of 1996, as reflected in its title "Commercial Availability of Navigation Devices," involves making such devices available from sources other than the cable operator as a catalyst for competition and innovation.⁸ In contrast, this proceeding attempts to deal with issues relating to the need for various types of equipment to work together, *e.g.*, televisions, VCRs and navigation devices, and the thrust of the labeling issue raised by Time Warner revolves solely around the need to ensure

⁵See CERC Opposition at 2-4.

⁶See *id.* at 2

⁷See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80. Most recently, the Commission conducted its 2000 review of progress made regarding the commercial availability of navigation devices. See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Further Notice of Proposed Rule Making and Declaratory Ruling, CS Docket No. 97-80, FCC 00-341 (rel. September 18, 2000).

⁸See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order in CS Docket No. 97-80 (1998) at ¶ 2 (discussing the Congressional objectives underlying Section 304, the Commission explained that "[a]s navigation devices are the means to deliver analog and digital communications, competition in the navigation equipment market is central toward encouraging innovation in equipment and services, and toward bringing more choice to a broader range of consumers at better prices.")

that “consumers have a clear understanding of the capabilities of digital television receivers that they purchase.”⁹ Had the Commission believed that these two issues were inextricably intertwined, it would have consolidated the two proceedings.

The Commission’s goal in this proceeding was to adopt labels that “permit consumers to make well-informed decisions about DTV equipment purchases based on a clear understanding of the capabilities of receivers with different labels.”¹⁰ Unfortunately, the labels actually adopted in this proceeding fall short of this worthy objective and in fact raise serious concerns about potential consumer confusion and frustration. They fail to explain in plain English the compatibility features and drawbacks offered by a particular digital TV set. More importantly, the Commission’s labels fail to identify whether the consumer can gain access to all multichannel video programming distributors’ (“MVPD”) services using a particular CE device.¹¹ The Commission therefore should refine its labeling requirements to accurately reflect the functionality of particular TV sets that qualify for a specified label.

As Time Warner explained in its Petition for Reconsideration, the Commission should avoid the use of “cable ready” to identify any device which is not in fact capable of receiving all services available from the cable operator. One need only look at the consumer confusion that

⁹See *In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking in PP Docket No. 00-67, 15 FCC Rcd 8776 at ¶ 9 (2000).

¹⁰See Report and Order at ¶ 13.

¹¹Time Warner does not, however, suggest that all devices must support all MVPD services; rather, Time Warner wants to ensure that consumers know up front whether a particular device will or will not support various services.

resulted in the analog context to understand why improper usage of that term will inevitably invite consumer confusion in the digital context.¹² As Commissioner Barrett has previously explained,

It must be remembered that the consumer electronics equipment compatibility section of the Cable Television Consumer Protection and Competition Act of 1992 [] was adopted as a result of consumer confusion and misunderstanding about the technical capabilities of their electronic equipment vis-a-vis their cable systems. Equipment that was called or implied to be “cable ready” or “cable compatible” often led to the “uneducated” consumer to believe that he/she would not need a converter or set top box to receive certain cable services. While consumers may have been able to tune certain cable channels, they were often unable to receive any scrambled programming services. In the end, cable operators were faced with unhappy and frustrated subscribers, who had paid large sums of money for electronic equipment that they believed would not require any additional equipment to receive cable service.¹³

Given the susceptibility to confusion from the term “cable ready,” the Commission should avoid labels that include these words altogether, or at minimum, only those devices that themselves are capable of supporting all services offered by a cable operator should bear a label that includes the term “cable ready.”

¹²See Comments of the National Cable Television Association in PP Docket No. 00-67 (May 24, 2000) at 4 (“NCTA Digital Compatibility Comments”).

¹³See *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronic Equipment*, Memorandum Opinion and Order in ET Docket No. 93-7, 11 FCC Rcd 4121 (1996) (dissent of Commissioner Andrew C. Barrett).

III. CERC ERRONEOUSLY BELIEVES THAT POINT-OF-PURCHASE EDUCATION IS UNIMPORTANT.

CERC incorrectly believes that consumer education at the point-of-purchase remains unimportant. CERC's disdain for labeling requirements altogether is apparent:

- “CERC and its members have argued that it is the competitive reality, not the label, that is critical – if products are in fact competitive, the marketplace is the best ‘label.’”¹⁴
- “If [OpenCable-reliant products] will not [live up to industry promises to support competitive entry,] the Commission should suspend imposition of any labels on the basis of such finding.”¹⁵
- NCTA's Hart Addendum “provide[s] support for the FCC's approach (challenged by petitioners) of not requiring that labels be given decisive prominence in the marketing of products.”¹⁶

What is most mysterious is why CERC remains so adamantly against point-of-purchase education if, in fact, the labels adopted by the Commission “adequately reflect the legitimate expectations that manufacturers, cable operators, retailers and consumers should have for DTV devices capable of operating on cable systems,” as CERC argues they do.¹⁷ Regardless of whether “consumers rely on many sources of information, and are quite capable of finding a context for any particular bit of information received, through labeling or otherwise,”¹⁸ conspicuous, concise and clearly

¹⁴See CERC Opposition at 2.

¹⁵See *id.*

¹⁶See *id.* at 6.

¹⁷See CERC Opposition at 2.

¹⁸See *id.* at 6.

understandable point-of-purchase information regarding products would seem to serve CERC's members' interests.¹⁹

Common sense dictates that if these rules are to successfully protect consumers, not only must adequate information be developed to afford a clear understanding of the capabilities of any digital television receivers or devices, consumers must have ready access to this information prior to the time of their purchases. When a consumer is making his/her decision to purchase, relevant information should not be hidden on the bottom or back of devices,²⁰ or buried in owners' manuals that are not available until the devices are taken home and unpacked. No consumer should ever be misled about the capabilities and limitations of a particular device. Ideally, there should be clear, concise point-of-purchase displays in plain, nontechnical language explaining what features each device does and does not offer.

The *Report and Order*, focusing solely on the details and particulars of the labeling standards, failed to address the need for such consumer education at the point of purchase. While Time Warner believes that the labels themselves require further refinement, the descriptions

¹⁹After all, is it not in consumer electronics retailers' best interests to make it easy for consumers to make well-informed decisions and facilitate the buying process? Customer dissatisfaction, for whatever reason, obviously results in diminished revenues, either as a result of the customer's decision not to purchase the product or to return it upon discovering the product does not meet expectations or satisfy the customer's particular needs. Customer returns seemingly impose an additional cost on the retailer. Why else then would many retailers charge "re-stocking" fees for returned merchandise?

²⁰The Commission's current rules do not require anything more than conformity of labels to the requirements of Sections 2.925(d) and (e) of its rules. Absent circumstances requiring an alternative method, the "label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase," *i.e.*, "visible from the outside of the equipment enclosure." *See* 47 C.F.R. §§ 2.925(d); 2.925(d)(2); 2.925(e). In practice, it appears that such labels typically are affixed to the back or base of the cabinet of the equipment itself and not on the device's packaging.

accompanying those labels provide a good basis for helping consumers identify what a particular device offers.²¹ With improved labeling and aggressive point-of-purchase consumer education efforts, consumer confusion and frustration can be minimized.²² The Commission should now make a strong statement for conspicuousness by explicitly and unambiguously requiring the presentation of all information relevant to the capability of any digital television receiver or device at the point of purchase prior to the time of purchase.²³

²¹Time Warner, however, would suggest that the labels should also reflect whether a particular device can support individual services offered by cable operators, *e.g.*, electronic programming guides, video-on-demand, remote-controlled impulse pay-per-view.

²²*See In the Matter of Compatibility Between Cable and Consumer Electronics Equipment*, Petition for Reconsideration of Time Warner Cable in PP Docket No. 00-67 (November 27, 2000) at 8-9 (discussing examples of ways to facilitate consumer education and customer satisfaction).

²³Under Section 624A(c)(2)(A) of the Act, the Commission has clear jurisdiction to impose such obligations on the CE industry so that consumers will not be misled. *See* 47 U.S.C. § 544A(c)(2)(A).

IV. CONCLUSION

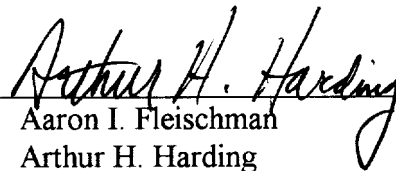
CERC's Opposition represents nothing more than an attempt to use this proceeding to reargue issues relating to commercial availability of navigation devices. As that issue remains the subject of its own proceeding, the Commission must reject CERC's Opposition. Indeed, CERC's opposition to point-of-purchase consumer education seems at odds with its members' business objectives. Is it not in retailers' best interests to have well-informed customers?

Time Warner continues to believe that the Commission's *Report and Order* fails to achieve its intended goal of developing a set of clear and concise labels for digital CE devices that will help consumers make informed purchasing decisions. Time Warner therefore respectfully requests that the Commission revisit its decision in favor of more consumer friendly labels that provide plain English explanations of the functionalities of particular devices and conspicuous point-of-purchase consumer education.

Respectfully submitted,

TIME WARNER CABLE

By:



Aaron I. Fleischman
Arthur H. Harding
Craig A. Gilley
Lisa Chandler Cordell

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, DC 20036
(202) 939-7900

January 16, 2001

Its Attorneys

#129835v2<iManage> -TWC - Digital Compatability Recon Reply.wpd

CERTIFICATE OF SERVICE

I, Kyle Baker, a secretary with the law firm of Fleischman and Walsh, L.L.P., certify that on this 16th day of January 2001, I sent, via first class mail or hand delivery, copies of the foregoing TIME WARNER CABLE REPLY TO OPPOSITION OF CONSUMER ELECTRONICS RETAILERS COALITION to each of the following:

Chairman William Kennard
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Deborah Lathen
Chief, Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 3C-754
Washington, DC 20554

William Johnson
Deputy Chief, Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 3C-754
Washington, DC 20554

Deborah Klein
Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 3C-754
Washington, DC 20554

Thomas Horan
Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
3C-754
Washington, DC 20554

Robert Pepper
Federal Communications Commission
445 Twelfth Street, SW
Room 7C-347
Washington, DC 20554

Amy Nathan
Federal Communications Commission
445 Twelfth Street, SW
Room 7C-313
Washington, DC 20554

Jonathan Levy
Federal Communications Commission
445 Twelfth Street, SW
Room 7C0-362
Washington, DC 20554

Alan McCollough
W. Stephen Cannon
Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, VA 23233

Leonard H. Roberts
Ronald L. Parrish
Radio Shack Corp.
100 Throckmorton Street
Suite 1800
Fort Worth, Texas 76102

Paul Shay
Sears, Roebuck & Co.
3333 Beverly Road
Hoffman Estates, IL 60179


Morrison G. Cain
International Mass Retail Assn.
1700 North Moore Street
Arlington, VA 22209

Don Gilbert
National Retail Federation
325 7th Street, NW
Washington, DC 20004

Joe D. Edge
Mark F. Dever
Drinker, Biddle & Reath
1500 K Street, NW
Washington, DC 20005

Robert S. Schwartz
Catherine M. Krupka
McDermott, Will & Emery
600 13th Street, NW
Washington, DC 20005

Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk
National Cable Television Association
1724 Massachusetts Avenue, NW
Washington, DC 20036



Kyle Baker